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MASTER OF MILITARY STUDIES

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**TITLE: MILITARY AND CONTRACTOR JUSTICE IN IRAQ**

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## DISCLAIMER

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### *Acknowledgement*

This paper is dedicated to the memory of Captain Chistopher R. Pate USMCR, who gave his life in Iraq in the performance of his duties.

## **Executive Summary**

**Title:** Military and Contractor Justice in Iraq: A case study in the application and accountability of deadly force in Iraq. How are the U.S. Military and private security contractors governed and held accountable for their actions?

**Author:** Major James L. Janay USMC

**Thesis:** Insurgent attacks on personnel, logistics, and key infrastructure in Iraq are a well-established reality for that theater. Private security contractors(PSC's), hired by both the United States government and private companies, have filled a void; providing security where the military cannot. The security provided by PSC's could be considered effective, however numerous incidents in the application of deadly force by PSC's have called into question their accountability and effectiveness to the overall mission of Operation Iraqi Freedom.

**Discussion:** Private security contractors have been protecting personnel, logistics, and infrastructure in Iraq since 2003. The contractors have performed their security mission well, but sometimes at the cost of overall mission in Iraq. While the military is governed under the Uniform Code of Military Justice, and the application of deadly force determined appropriate by the Rules of Engagement; PSC's are not held to the same standard, even though they perform a core-mission of the military. In fact, in some cases PSC's who have been determined to have applied deadly force inappropriately have not been held accountable at all. Some have been merely been fired, and sent back to their respective countries; whereas military personnel suspected of the same offense have been court-martialed. A stark gap of accountability exists.

**Conclusion:** The U.S. Government, as well as numerous private corporations, employ a plethora of PSC's in Iraq, in order to enhance the security provided by the military. Providing security in a combat zone is a core-mission of the military. PSC's who perform this core-mission of the military should be held accountable for their actions in the same manner as the US military, under the Uniform Code of Military Justice. The Office of the Inspector General of Iraq, and military court system can fulfill this role, in a manner that is both established as well as accepted in the United States, and is recognized as credible by international standards of law.

## **Introduction**

Private security contractors (PSC's), hired by the United States (U.S.) government and private corporations, have operated in Iraq since 2003. The contractors have performed their mission with some degree of success. However, a number of incidents where PSC's have applied deadly force have highlighted the almost complete lack of regulation and accountability that have become the unintended hallmark of PSC's. One of the most highly publicised incidents occurred in September 2007, where Blackwater PSC's killed 17 Iraqis in Baghdad.

Conversely, the U.S. military defines the appropriate use of force under the Rules of Engagement(ROE), as defined by Combatant Commander. Where the application of deadly force has been found to be inappropriate, military members are tried under the Uniform Code of Military Justice, an internationally accepted standard of justice.

This research paper will address the stark chasm of accountability that exists between the U.S. military and PSC's, as well as a case study of U.S. military justice in Iraq, and PSC justice in Iraq. Finally, this paper will propose a solution to address the differences in the regulation and accountability of both the U.S. military and PSC's in Iraq.

## **Background: The Law of Armed Conflict, Rules of Engagement and DOD Law of War of Program**

The Law of Armed of Conflict (LOAC) was created from the desire among nations to prevent unnecessary suffering and destruction while not being an impediment to the effective waging of war. As a part of the international law system, LOAC is designed to regulate the conduct of armed hostilities with the goals of protecting civilians, prisoners of war, wounded, sick, and shipwrecked persons. The Law of Armed Conflict applies to all international armed conflicts as well as the conduct of military operations and other related activities in armed conflict.<sup>i</sup>

LOAC stems from both customary international law as well as treaties. Customary international law is based on the accepted practice that nations have come to accept as legally required and establishes the traditional rules that govern the conduct of all military operations in any armed conflict.<sup>ii</sup>

Article XI of the US Constitution states that the treaty obligations of the US are the “supreme law of the land” once ratified. The US Supreme Court has determined that international law, to include customary, are part of US law. That being accepted, treaties and other agreements the US enters into are of equal status as other US laws. Therefore, all persons that are subject to US laws must also abide by the United States’ Law of Armed Conflict.<sup>iii</sup>

Three LOAC principles are designed to guide countries in the conduct of war. They are Military Necessity, Distinction, and Proportionality.<sup>iv</sup>

Military necessity requires that forces engage in only those acts that are deemed

necessary to accomplish a legitimate military objective. Attacks are to be limited strictly to military objectives. In the application of targeting, the military may target those facilities, equipment, and forces which, if destroyed, would lead as quickly as possible to the enemy's partial or complete submission. Military necessity also applies to the weapons and ammunition, illegal arms are not permitted to be used in combat and some legal weapons have restrictions on their employment in order to increase their compliance with the Law of Armed Conflict.<sup>v</sup>

Distinction is simply the discrimination between lawful combatants and noncombatant targets, such as civilians, civilian property, prisoners of war, and wounded personnel who are out of combat action. For example, a violation of this principle would be an attack that strikes military objectives and civilians without distinction. The principle of distinction also requires defenders to separate military persons/facilities and civilian persons/facilities to the extent feasible.<sup>vi</sup>

Proportionality restricts the use of force that exceeds that needed to accomplish the military objective. This principle compares the military advantage gained versus the harm inflicted while gaining the advantage, requiring a balancing between the direct military advantage gained and the expected incidental civilian injury or damage, also known as collateral damage. Under the proportionality litmus test, combat forces minimize collateral damage while accomplishing their mission.<sup>vii</sup>

While the Law of Armed of Conflict provides the aforementioned principles, it also provides for the definitions of persons, property, into categories for the classification of military targets. These definitions, based upon the Geneva Conventions, provide the legal backdrop for

their engagement by force, or not, into the following four categories.<sup>viii</sup>

Lawful combatants are authorized by their governments, or LOAC, to engage in hostilities, and may include both regular and irregular forces. They must be commanded by a person responsible for subordinates, have distinctive emblems recognized at a distance, carry arms openly, and conduct their operations according to the Law of Armed Conflict. The LOAC also provides combatant immunity for lawful acts of war.<sup>ix</sup>

The second category of personnel are noncombatants, these individuals are not authorized by their government or the LOAC to engage in any hostilities. These personnel may be civilians accompanying the military, combatants who can no longer fight, prisoners of war, chaplains, and medical service personnel. This category may not be subjected to direct attacks, but may be subject to harm in the course of an attack on a valid military objective.<sup>x</sup>

Unlawful Combatants are personnel who participate in hostilities with no authorization from their government or LOAC, such as insurgents. Examples of these personnel may be civilians who attack a military member, or thieves who kill their victims in time war. Unlawful combatants who engage in hostilities become lawful targets, and may be tried as war criminals.<sup>xi</sup>

The final category of personnel is those of Undetermined Status. This category exists for instances where there is doubt whether a person is lawful combatant, unlawful combatant, or noncombatant. In any such case, this person is afforded protection of the Geneva Prisoner of War Convention until that person's status is determined.<sup>xii</sup>

The LOAC also stipulates in general terms what are considered to legitimate, military

targets. Military targets are by their own nature, location, purpose, or use makes an effective contribution to an enemy's military capability, and whose total or partial destruction, capture, or neutralization in current conditions at the time of attack enhance legitimate military objectives. Therefore, contractors could be considered lawful targets under the LOAC.<sup>xiii</sup>

The Law of Armed Conflict specifically protects civilian populations, military attacks on cities and towns must be justified by military necessity. Attacking noncombatants (civilians), for the purpose of terrorizing them is prohibited. Commanders and their personnel, must take into account civilian deaths which may occur as the result of an attack in the planning process. Commanders as well as judge advocate, intelligence, and operations personnel plan attacks to ameliorate the possibility of civilian casualties in the course of military operations.<sup>xiv</sup>

Finally, the LOAC describes objects that cannot be attacked. Objects that have a general immunity are those dedicated to peaceful purposes. Specific protection is allowed to medical units/personnel, prisoners of war, the wounded, religious and cultural buildings, as well as safety zones designated under the Geneva Conventions. These objects may lose their immunity, if used for military purposes and they may suffer collateral damage when nearby military targets are attacked.<sup>xv</sup>

### **Rules of Engagement, for the Military and Private Security Contractors**

The Rules of Engagement (ROE) for a Combatant Command, such as Multi-National Force Iraq, serve the purpose of ensuring mission accomplishment, while complying with the Law of Armed Conflict. According to Joint Publication 1-02, the Rules of Engagement are: Directives issued by competent military authority which delineate the circumstances and

limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered. In the case of Iraq, the Commander of Multi-National Forces Iraq (MNF-I) delineates the ROE for all personnel under his command.<sup>xvi</sup>

The benefit of Combatant Commanders determining the Rules of Engagement for forces under his control is standardization. Military personnel are in-briefed prior to and/or upon arrival in the respective theater of operations. Furthermore, some commands will distribute ROE pocket cards, such as the one issued to Combined Joint Task Force 7(See Annex 1). Military personnel are also required to attend Law of War and Rules of Engagement training as part of their pre-deployment training program.<sup>xvii</sup>

Conversely, standardization among Private Security Contractors appears to be dictated by the terms of the contract. For example, Blackwater is the primary PSC for the Department of State(DoS). Under that contract, the DoS Regional Security Officer, with authority from the Chief of Mission, establishes the Rules of Engagement as well as use of force policies. Assistant Regional Security Officers from DoS are assigned to supervise PSC daily operations, in order to ensure contract compliance.<sup>xviii</sup>

How many PSC's and how many different ROE's are in use in Iraq? In 2007, it was estimated there were over 161,000 , that number is at least as many as there are uniformed services personnel that were stationed inside Iraq. These employees worked under contracts from various departments of the United States government, such as the Department of Defense and Department of State, subcontracted to corporations such as Kellogg Brown & Root and Blackwater.<sup>xix</sup>

## **The Uniform Code of Military Justice**

The Uniform Code of Military Justice (UCMJ) is a federal law, its provisions are contained within United States Code, Title 10, Chapter 47. Article 36 of the UCMJ allows the President of the United States (POTUS) to prescribe the rules and procedures to implement the articles of the UCMJ. The POTUS exercises this power via Manual for the Courts-Martial, which is actually an executive order for implementing military law for the U.S. Armed Forces.<sup>xx</sup>

Military personnel operate at all times under the Uniform Code of Military Justice. The Military Justice System operates as tested, vetted, and approved manner to adjudicate domestic infractions, as well as those committed abroad. Military members who may commit offenses in combat, such as a Law of Armed Conflict violation, will be prosecuted under the UCMJ. Military members may be charged under various articles which are appropriate to the alleged criminal act they may have committed, such as Article 118 for murder and Article 119 for manslaughter.<sup>xxi</sup>

## **The Department of Defense Law of War Program**

The Department of Defense has an established Law of War (LOW) program, which requires each service to create their own, individual LOW program via Department of Defense Directive (DoDD) 2311.01E. LOAC, or LOW, training is a treaty obligation under provisions of the 1949 Geneva Conventions.<sup>xxii</sup>

As an example, the Marine Corps complies with DoDD 2311.01E through the Marine Corps Law of War Program, which is detailed in Marine Corps Order (MCO) 3300.4. The MCO

designates that all personnel have entry-level training as well as follow-on training. For some personnel, the Order further designates that certain personnel will be subject to specialized training.<sup>xxiii</sup>

The intent of the Department of Defense Law of War program is to ensure that all service members are instructed in the Law of War, and to comply with the Geneva Conventions of 1949 of which the United States is a signatory.<sup>xxiv</sup>

### **Military Justice Application in the wake of the Haditha Incident**

In November 2005, Kilo Company, 3<sup>rd</sup> Battalion of the 1<sup>st</sup> Marine Regiment had already seen some of the fiercest fighting of Iraq, in Fallujah. When the company moved into Haditha, the combat experience of some troops was highly prized. Haditha, at this time, was a known insurgent stronghold where insurgents adopted multiple tactics to complicate the Rules of Engagement (ROE) for the Marines. Insurgent tactics were known to include but were not limited to: attacks from mosques, schools, homes, and the use of civilians as human shields during attacks.<sup>xxv</sup>

1<sup>st</sup> Squad of Kilo Company, led by Staff Sergeant Frank Wuterich, was on a mounted patrol of four humvees on the morning of 19 November, 2005. At approximately 0715, while a taxi was approaching the first humvee in the convoy, an Improvised Explosive Device (IED) detonated and killed LCpl Terrazas, the driver of the fourth humvee and wounded two other Marines. After that point, the accounts of Marines and local witnesses differ.<sup>xxvi</sup>

The Marines of 1<sup>st</sup> squad, stated that immediately after the IED detonated the convoy came under small arms attack, from nearby homes. Marines from the patrol stated that they

engaged the source of that fire, clearing houses of insurgents, and killing eight of them.<sup>xxvii</sup>

On November 20, a U.S. Marine Spokesman in Ramadi made the following statement:  
“A U.S. Marine and 15 civilians were killed yesterday from the blast of a roadside bomb in Haditha. Immediately following the bombing, gunmen attacked the convoy with small arms fire. Iraqi army soldiers and Marines returned fire, killing eight insurgents and wounding another.”<sup>xxviii</sup>

The accounts of local witnesses were quite different from the Marines. Witnesses stated that the Marines went from house to house killing all the inhabitants of each house, without hesitation. An Iraqi journalism student later videotaped the scene, stating, “They not only killed people, they smashed furniture, tore down wall hangings...”. Another Haditha resident claimed that he watched and listened from his home, as “the Marines went from house to house, killing all that crossed their path.”<sup>xxix</sup>

Not long after Time magazine broke the news story on the front page of it’s magazine, as well as the internet, Representative John Murtha (D-Pa.) stated on CNN Live, “Marines overreacted....and killed innocent civilians in cold blood.”<sup>xxx</sup>

Before any investigation was complete, Lieutenant Colonel Chessani, was relieved of command of 3<sup>rd</sup> Battalion, 1<sup>st</sup> Marine Regiment, 3/1. Two of his company commanders were also relieved, one of them being Captain Luke McConnell, the commanding officer of Kilo Company. The Marine Corps decided to relieve the commanders due to a “loss of confidence.”<sup>xxxi</sup>

Two military boards and the Naval Criminal Investigative Service investigated the Haditha Incident. The US government would later charge four Marines with murder, and another four with dereliction of duty, including Lieutenant Colonel Chessani.<sup>xxxii</sup>

Eventually, all charges against the Marines were either dropped, or in one case acquitted, Lieutenant Colonel Chessani's case. After facing the U.S. Government's final attempt to punish him for acts he did not commit and reported in a timely manner, Chessani successfully faced his Board of Inquiry, with the Board's final decision that he be allowed to retire at his current rank.<sup>xxxiii</sup>

The legal odyssey that Lieutenant Colonel Chessani and his Marines faced stirred from the events at Haditha. An investigative and trial process that literally lasted for years, has exonerated all of these Marines from any wrongdoing, or criminal behavior. The process also demonstrated to the US and the world that the US military would be held accountable in a venue that is vetted, tested, and accepted by the international community.<sup>xxxiv</sup>

### **Private Security Contractor Justice in Iraq**

On September 16, 2007, a State Department convoy with Blackwater contractors providing security was passing through the crowded Nissour square in Baghdad. The accounts of the PSC's and local residents differ past the point.<sup>xxxv</sup>

The PSC's from Blackwater stated they were attacked by gunmen, and responded properly with regards to the rules of engagement, and subsequently fought their way out of the town square after one of their vehicles was disabled.<sup>xxxvi</sup>

Local residents as well as Iraqi police have a very different account. They state that the Blackwater employees opened fire first, on a vehicle that did not move out of the convoy's path at a quick enough pace. The firefight brought the Blackwater Quick Reaction Force (QRF), and reinforcements from the Iraqi Police.<sup>xxxvii</sup>

About 20 civilians were reported to have been killed, one of the few agreements of fact between the two accounts. The international community condemned the incident.<sup>xxxviii</sup>

The Iraqi populace was collectively angered in an instant, and the Prime Minister of Iraq called the killings a crime, stating that he was revoking Blackwater's license to operate in Iraq and would prosecute any foreign contractors found to have been involved in the killings.<sup>xxxix</sup>

The above incident is not isolated. Another occurred on December 24, 2006 when an intoxicated Blackwater contractor, who was off-duty, shot and killed an Iraqi bodyguard in the Green Zone(served the Iraqi Vice President's security detail). The contractor was simply fired, and sent back to the United States. And another on May 24, 2007, where a Blackwater PSC killed an Iraqi driver whose vehicle was deemed to have come too close to the Department of State convoy. The Nissour Square incident was investigated by multiple authorities and the Blackwater employees involved were indicted in federal court.

On December 31, 2009, U.S. Federal District Court Judge Ricardo Urbina dismissed all charges against five of the six defendants, the sixth had pleaded guilty at an earlier date, of the Nissour Square incident. Excerpt from the legal opinion:

"From this extensive presentation of evidence and argument, the following conclusions ineluctably emerge. In their zeal to bring charges against the defendant in this case, the prosecutors and investigators aggressively sought out statements the defendants had been compelled to make to government investigators in the immediate aftermath of

the shooting and in the subsequent investigation. In so doing, the government's trial team repeatedly disregarded the warnings of experienced, senior prosecutors, assigned to the case specifically to advise the trial team on Garrity and Kastigar issues, that this course of action threatened the viability of the prosecution. The government used the defendants' compelled statements to guide its charging decisions, to formulate its theory of the case, to develop investigatory leads and, ultimately, to obtain the indictment in this case. The government's key witnesses immersed themselves in the defendants' compelled statements, and the evidence adduced at the Kastigar hearing plainly demonstrated that these compelled statements shaped portions of the witnesses' testimony to the indicting grand jury.

The explanations offered by the prosecutors and investigators in an attempt to justify their actions and persuade the court that they did not use the defendants' compelled testimony were all too often contradictory, unbelievable and lacking in credibility.

In short, the government has utterly failed to prove that it made no impermissible use of the defendants' statements or that such use was harmless beyond a reasonable doubt.

Accordingly, the court must dismiss the indictment against all of the defendants."

Far from being exonerated of any wrongdoing, the case was dismissed as a result of legal technicalities. More importantly, the case has implications abroad for the countries that PSC's are employed in, or could be in the future.<sup>x1</sup>

## **Recommendations**

The following recommendations are for the future use of Private Security Contractors in Iraq, and other combat zones.

### **Recommendation One:**

The United States government should establish a system of implementation of the Uniform Code of Military Justice for Private Security Contractors providing security services for the US government, all departments, as well as civilian corporations in a designated combat zone.

According to General Anthony Zinni USMC, former commander of U.S. Central

Command, “The whole question of legal accountability has never been adequately answered.” The implementation of the UCMJ to include Private Security Contractors provides the United States government a vetted means of adjudicating the alleged misconduct, and even cases of unlawful killing.<sup>xli</sup>

The legal framework for this implementation could be accomplished through a multi-step process. First, private security contracts would delineate specifically to private security firms, and the individual employee, that any and all allegations of misconduct would be prosecuted and adjudicated under the Uniform Code of Military Justice. Second, the military justice system must establish should be prepared to process these cases in the same manner as for US service members.

Colonel Peter Mansoor USA (Ret.), is regarded as a counter-insurgency expert, made the following statement in 2007, “ if they push traffic off the roads, or they shoot up a car that looks suspicious, whatever it may be, they may be operating within their contract - - to the detriment of the mission, which is to bring the people over to your side. I would much rather see basically all armed entities fall under a military chain of command.”<sup>xlii</sup>

Military code and the military justice system are intended to ensure discipline in the armed forces, and the in the past those “civilians” that would invariably accompany the armed force(s). British tradition, that was carried over into American law, provided that “retainers to the camp, and persons serving the Army in the field,” although not enlisted, were in time of war subject to military discipline. This legal standard was applied routinely in all of America’s wars until Vietnam.<sup>xliii</sup>

The UCMJ should be standard to which Private Security Contractors should be held. It provides the US government a vetted system of adjudication, and is accepted by the international community.

### **Recommendation Two: Office of the Inspector General in Iraq**

The Office of the Inspector General (IG) of Iraq should establish a Private Security Contractor Division, which would be exclusively dedicated to the investigation of all alleged misconduct on the part of Private Security Contractors.

The IG of Iraq should have the authority to determine the level of investigation appropriate to the alleged misconduct. For example, lesser offenses could be investigated by the Manual of Judge Advocate General (JAGMAN). In order of ascension, the next step would a Preliminary Investigation (PI) governed under Article 32 of the Uniform Code of Military Justice.<sup>xliv</sup>

For the most serious offenses, such as murder or manslaughter, the IG of Iraq should have the authority to delegate these investigations to service investigative units, such as the Naval Criminal Investigative Service. The selection of the service investigative unit would be based upon the Area of Operations that the incident occurred in, as well as investigative unit availability.

The Office of the Inspector General of Iraq should serve as the central processing center for any and all investigations of both military personnel, as well as PSC's. While this will require additional manpower commensurate to the number of investigations, the measure of

accountability gained from this action will ensure not only that contracts are fulfilled, but that reportable incidents are investigated properly, with the military chain of command being held accountable for those investigations as well.

### **Recommendation Three: Standardize the Rules of Engagement**

The complete of lack standardization of the Rules of Engagement is a major fault in the current employment of Private Security Contractors. As of this writing, it is undetermined how many different ROE are currently being utilized in Iraq. PSC's serving the Department of State operate under the Rules of Engagement as determined by the Chief of Mission and Regional Security Officer where they serve. It is undetermined who sets the ROE for PSC's under contract with civilian corporations.<sup>xlv</sup>

Brigadier General Karl Horst, the former deputy commander of the 3<sup>rd</sup> Infantry Division view of the contractor situation, "These guys run loose in this country and do stupid stuff. There's no authority over them, so you can't come down on them hard when they escalate force. They shoot people, and someone else has to deal with the aftermath."<sup>xlvi</sup>

Ensure all private security contractors operating in Iraq should operate under the same Rules of Engagement as the military, this serves two purposes. The first is standardization. There can be no question as to what the ROE is, when military personnel and PSC's, regardless of whom they are working for, are compelled to employ force in a uniform manner.

The second purpose is the standard of vetting which the military Rules of Engagement must endure prior to approval. Commanders, usually geographic combatant commanders, issue

ROE, after review and approval by the Joint Chiefs of Staff. The approved military endure a standard of testing that ensures adherences to the Law of Armed Conflict principles tailored to the inherent political and military nature of a mission, or operation.

ROE in a combat zone should be the same for any personnel, contractor or military, in order to ensure compliance and supervision.

#### **Recommendation Four: Contract Inclusion of the Law of Armed Conflict and consent to the Uniform Code of Military Justice**

The Law of Armed Conflict is a part of the United States Law, via the treaties which the United States is a signatory, to include the Geneva Conventions. The United States Constitution, Article VI, and the Supreme Court support the LOAC. All persons that are subject to US laws must also abide by the Law of Armed Conflict.<sup>xlvii</sup>

Private Security Contractors are subject to the Law of Armed Conflict. Stipulation of this fact should be clearly stated in the contracts that US government awards to private security firms. Additionally, the individual contracts of the employees of private security firms should again state to the employee that are subject to the LOAC.

A further stipulation of all contracting of PSC's, would be the inclusion of a clause stipulating that individual employees of a private security firm can and will be prosecuted under the UCMJ for misconduct, to include Law of Armed Conflict violations.

The UCMJ should be the sole means of prosecuting and adjudicating Law of Armed Conflict violations for all personnel in Iraq. It provides the sole vetted, standard of justice for

LOAC violations, and is also means for the United States to demonstrate to the international community that the US, it's Total Force, complies with the Law of Armed Conflict.

### **Recommendation Five: Contractor Training in the Law of Armed Conflict and Rules of Engagement**

Department of Defense Directive 2311.01E, DoD Law of War Program, requires each department to design a program that ensure LOAC observance, prevents LOAC violations, ensures prompt reporting of alleged LOAC violations, appropriately trains all forces in LOAC, and completes a legal review of new weapons. Additionally, LOAC training is a treaty obligation of the United States under provisions of the 1949 Geneva Conventions.<sup>xlviii</sup>

All of the US Armed Services have a Law of War Program, in accordance with Department of Defense Directive. Private Security Contractors, from the US and other signatories of the Geneva Convention, must have a Law of War program in order to remain in compliance with international law, and in most cases US law.

Private security firms can use the Law of War training modeled after any of the four armed services of the United States, such as the Marine Corps Law of War Program which is detailed in Marine Corps Order 3300.4 which details the entry, follow-on, and specialized training requirements that Marines must incorporate into their pre-deployment training program.<sup>xlix</sup>

### **Recommendation Six: Contract Penalties for Violations of the Law of Armed Conflict**

Individual private security contractors can be held accountable under the Uniform Code of Military Justice, and the Law of Armed Conflict. Private security firms must also be accountable for the actions of their employees.

Contract stipulation for the rendering of monetary fines can be an effective method to ensure compliance of the company, and the individual contractor. Specific contracts, such as the multi-billion dollar Worldwide Personal Protective Services contract from the Department of State, should include language for the imposition for the private security firm whose employee is found guilty of a Law of Armed Conflict violation.

Private security is a business. The possibility of a multi-million dollar fine for a LOAC violation will provide motivation to the private security firm to keep good order and discipline among its' individual contractors.

## **Conclusion**

Private Security Contractors have been operating in Iraq since Operation Iraqi Freedom since 2003. PSC's have performed their mission with varying degrees of success. For high-profile missions such as the personal guard of L. Paul Bremer for his tour as the Head of the Coalition Provisional Authority, mission success is easily categorized by the fact that Mr. Bremer was unharmed during his tenure.<sup>1</sup>

Private security contractors have in some ways, been a detriment to the mission of Iraq. There have been numerous instances where the application of deadly force may not have been appropriate. The Nissour Square incident raises more questions than it answers.

When is the application of deadly appropriate? Are the PSC's functioning under the military's Rules of Engagement, or those of the Department of State, or the ROE of Kellogg, Brown, & Root? How many conflicting ROE's schemes can there be in one Combat Zone?

Regardless of the contract that PSC's are servicing, when PSC's serve in a combat zone they should use the Rules of Engagement of the military. In such a case, there would no question of standardization.

Accountability is the final albatross in the room. In some cases, there has been none. What are the strategic consequences of tactical actions, aka the Strategic Corporal that General Krulak spoke of has now become the Strategic Private Security Contractor. The Nissour Square Incident, where Blackwater contractors allegedly killed 18 civilians in the defense of their convoy sent shockwaves through the Department State, instantly enraged the populace of Iraq, and strained the relationship between Iraq and the United States.

To further complicate the matter, there was initially no legal mechanism to investigate or prosecute the alleged killings in Nissour Square, an FBI team had to be flown from the United States. Conversely, the Haditha incident was prosecuted in public view, with the expectation of a tried and vetted justice system would produce results for the Marines, and publicized to the world. Implementation and application of the UCMJ to Private Security Contractors can be an interim, or permanent solution. It is important to note that prior to the Vietnam War, contractors serving alongside the military, were subject to military code and justice in time of war.<sup>li</sup>

In closing, the future employment of Private Security Contractors is an almost certainty. How the United States government, and other corporations, regulates the employment of PSC's

is a matter that should be resolved now, before the next conflict becomes a reality. Tactical operations have strategic consequences, and the probability of another Nissour Square should be addressed now. According to General Anthony Zinni USMC (Ret.), the former CentCom commander, “The whole contracting business is in need of a thorough review. What should or shouldn’t be contracted? Demonstrate the cost benefit versus government provision of services. Clean up the contracts development (they are poorly developed and supervised in too many cases). Hold both contractors and government contracting accountable through some deliberate oversight organization.”<sup>lii</sup>

## End Notes

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<sup>i</sup> United States Air Force. Air Force Pamphlet 36-2241, "Professional Development Guide", Washington, D.C., July, 1, 2007, af.mil.

<sup>ii</sup> Ibid.

<sup>iii</sup> Ibid.

<sup>iv</sup> Ibid.

<sup>v</sup> Ibid.

<sup>vi</sup> Ibid.

<sup>vii</sup> Ibid.

<sup>viii</sup> Department of Defense, Department of Defense Directive 2311.01E DoD Law of War Program, Washington D.C., May 9, 2006.

<sup>ix</sup> Ibid.

<sup>x</sup> Ibid.

<sup>xi</sup> Ibid.

<sup>xii</sup> United States Marine Corps. Marine Corps Order 3300.4 Law of War Program. Washington, D.C., October 20, 2003.

<sup>xiii</sup> Ibid.

<sup>xiv</sup> Ibid.

<sup>xv</sup> Ibid.

<sup>xvi</sup> Department of Defense, Department of Defense Directive 2311.01E DoD Law of War Program, Washington D.C., May 9, 2006.

<sup>xvii</sup> Eicher, Michael. "Protecting Diplomats in Iraq." Marine Corps Command and Staff College. 2008.

<sup>xviii</sup> Singer, Peter W. "The dark truth about Blackwater." Salon Online Magazine, October 2, 2007, salon.com.

<sup>xix</sup> Ibid.

<sup>xx</sup> Joint Service Committee on Military Justice. Manual for Courts-Martial United States, 2008.

<sup>xxi</sup> Ibid.

<sup>xxii</sup> Department of Defense, Department of Defense Directive 2311.01E DoD Law of War Program, Washington D.C., May 9, 2006.

<sup>xxiii</sup> United States Marine Corps. Marine Corps Order 3300.4 Law of War Program. Washington, D.C., October 20, 2003.

<sup>xxiv</sup> Department of Defense, Department of Defense Directive 2311.01E DoD Law of War Program, Washington D.C., May 9, 2006.

<sup>xxv</sup> Duffy, Michael. "The Shame of Kilo Company." TIME Magazine, May 28, 2006, <http://time.com>.

<sup>xxvi</sup> Knickmeyer, Ellen. "In Haditha, Memories of a Massacre" The Washington Post, May 26, 2006, <http://washingtonpost.com>.

<sup>xxvii</sup> Ibid.

<sup>xxviii</sup> Ibid.

<sup>xxix</sup> Ibid.

<sup>xxx</sup> Ibid.

<sup>xxxi</sup> Michael. "The Shame of Kilo Company." TIME Magazine, May 28, 2006, <http://time.com>.

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<sup>xxxi</sup> Knickmeyer, Ellen. "In Haditha, Memories of a Massacre" The Washington Post, May 26, 2006, <http://washingtonpost.com>.

<sup>xxxii</sup> Brennan, Phil. "Amid Doublespeak, Marines Acquit Accused Hero." NewsMax.com, 15 December, 2009, <http://newsmax.com>

<sup>xxxiv</sup> Ibid.

<sup>xxxv</sup> Singer, Peter W. "The dark truth about Blackwater." Salon Online Magazine, October 2, 2007, [salon.com](http://salon.com).

<sup>xxxvi</sup> Ibid.

<sup>xxxvii</sup> Ibid.

<sup>xxxviii</sup> Ibid.

<sup>xxxix</sup> Ibid:

<sup>xl</sup> Jacoby, Mary. "Judge Prosecutorial Misconduct in Blackwater Dismissal." MainJustice.com, January 1, 2010, <http://mainjustice.com>.

<sup>xli</sup> Zinni, Anthony, General USMC (Ret.), Former Commander of U.S. Central Command. Interview with author. January 15, 2010.

<sup>xlii</sup> Singer, Peter W. "The dark truth about Blackwater." Salon Online Magazine, October 2, 2007, [salon.com](http://salon.com).

<sup>xliii</sup> Ibid.

<sup>xliiii</sup> Chambers II, John Whiteclay. THE OXFORD COMPANION TO AMERICAN MILITARY HISTORY. Oxford, New York, 1999, p618.

<sup>xliv</sup> Naval Justice School. JAGMAN Investigations Handbook. New Port, Rhode Island, February 2001.

<sup>xlv</sup> Eicher, Michael. "Protecting Diplomats in Iraq." Marine Corps Command and Staff College. 2008, p.4.

<sup>xlvi</sup> Singer, Peter W. "The dark truth about Blackwater." Salon Online Magazine, October 2, 2007, [salon.com](http://salon.com).

<sup>xlvii</sup> Ibid.

<sup>xlviii</sup> Department of Defense, Department of Defense Directive 2311.01E DoD Law of War Program, Washington D.C., May 9, 2006.

<sup>xlix</sup> United States Marine Corps. Marine Corps Order 3300.4 Law of War Program. Washington, D.C., October 20, 2003.

<sup>i</sup> Zinni, Anthony, General USMC (Ret.), Former Commander of U.S. Central Command. Interview with author. January 15, 2010.

<sup>ii</sup> Chambers II, John Whiteclay. THE OXFORD COMPANION TO AMERICAN MILITARY HISTORY. Oxford, New York, 1999, p618.

<sup>iii</sup> Zinni, Anthony, General USMC (Ret.), Former Commander of U.S. Central Command. Interview with author. January 15, 2010.

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## CJTF-7 U.S. ROE CARD

NOTHING ON THIS CARD PREVENTS YOU FROM USING DEADLY FORCE TO DEFEND YOURSELF

**1. Enemy military and paramilitary forces may be attacked subject to the following instructions:**

a. Positive Identification (PID) is required prior to engagement. PID is reasonable certainty that your target is a legitimate military target. If no PID, contact your next higher commander for decision.

b. Do not engage anyone who has surrendered or cannot fight due to sickness or wounds.

c. Do not target or strike any of the following except in self-defense to protect yourself, your unit, friendly forces, and designated persons or property under your control:

- Civilians
- Hospitals, mosques, churches, shrines, schools, museums, national monuments, and any other historical and cultural sites.

d. Do not fire into civilian populated areas or buildings unless the hostile force is using them for hostile purposes or if necessary for your self-defense.

e. Minimize collateral damage.

**2. You may use force, including deadly force, to defend yourself from persons who commit or are about to commit hostile acts against you. You may use the same level of force to protect the following:**

- your unit, and other friendly forces (including Iraqi police and security forces)
- Enemy prisoners of war and detainees
- Civilians from crimes that are likely to cause death or serious bodily harm, such as murder or rape
- Designated organizations and/or property such as personnel of the Red Cross/Red Crescent, UN, and US/UN supported organizations.



## CJTF-7 U.S. ROE CARD

### Warning before firing

You may, time permitting, give a warning in a loud clear voice:

**KIFF - ARMICK (Stop or I'll shoot)**

**ARMY SE-LA-HAK (Drop your weapon)**

3. You may detain civilians if they interfere with mission accomplishment, possess important information, or if required for self-defense.

- Treat all persons and their property with respect and dignity
- Iraqi security forces and police are authorized to carry weapons

4. Necessary force, including deadly force, is authorized for the protection of some types of property including the following:

- Public utilities
- Hospitals and public health facilities
- Electric and Oil infrastructure
- Coalition and captured enemy weapons and ammunition
- Financial institutions
- Other mission essential property designated by your commander

### REMEMBER

- Attack only hostile forces and military targets
- Avoid fratricide—be aware of nearby units and Iraqi police and security forces
- Spare civilians and civilian property if possible
- Do not loot or steal
- Conduct yourself with dignity and honor
- Comply with the Law of War. If you see a violation, report it
- **YOU ALWAYS HAVE THE RIGHT TO USE NECESSARY FORCE, INCLUDING DEADLY FORCE, TO PROTECT YOURSELF AND OTHERS**

These ROE will remain in effect until your commander orders you to transition to different ROE.

AS OF 15 JUNE 2003